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11 Attorneys for Defendants
12 NJOY, INC. and SOTERRA, INC.

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION
16

17 IN RE
18 NJOY, INC. CONSUMER CLASS
19 ACTION LITIGATION

Case No. CV 14-00428-MMM (RZx)
consolidated with SACV 14-00427-
MMM (RZx)

Honorable Margaret M. Morrow

**DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
DISMISS THIRD CONSOLIDATED
AMENDED COMPLAINT**

Date: March 23, 2015
Time: 10:00 a.m.
Place: Courtroom 780

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on March 23, 2015 at 10:00 a.m., or as
 3 soon thereafter as counsel may be heard in Courtroom 780 of the above-entitled
 4 Court located at 255 E. Temple St., Los Angeles, CA 90012, Defendants NJOY,
 5 Inc. and Soterra, Inc. (“Defendants”) will and hereby do move this Court for an
 6 order dismissing the Third Consolidated Amended Complaint (Dkt. 82) (“TCAC”),
 7 and each claim contained therein, filed by plaintiffs Ben Z. Halberstam, Eric
 8 McGovern, and Kathryn Thomas (collectively, “Plaintiffs”).

9 This Motion is made pursuant to Rules 8(a), 9(b) and 12(b)(6) of the Federal
 10 Rules of Civil Procedure, and is based on the following grounds:

- 11 • The TCAC is subject to Rule 9(b)’s heightened pleading standards;
 12 however, Plaintiff Halberstam fails to plead elements of his claim with
 13 particularity;
- 14 • Plaintiffs’ claims based on Defendants’ affirmative statements fail as a
 15 matter of law, because Defendants’ advertisements do not make the
 16 representations that Plaintiffs interpret them to make;
- 17 • Plaintiffs’ claims based on Defendants’ affirmative statements fail as a
 18 matter of law, because the statements are generalized, non-specific and
 19 subjective, and therefore are non-actionable;
- 20 • Plaintiffs’ claims based on Defendants’ affirmative statements also fail
 21 as a matter of law under the “likely to mislead a reasonable consumer”
 22 standard;
- 23 • Plaintiffs’ claims based on Defendants’ alleged nondisclosures fail
 24 because Defendants did not have a duty to disclose any of the
 25 allegedly omitted facts;
- 26 • Plaintiffs’ claims based on Defendants’ alleged nondisclosures fail
 27 because Plaintiffs do not sufficiently allege that Defendants had
 28

1 exclusive knowledge of whatever facts that Plaintiffs claim should
2 have been disclosed; and

- 3 • Plaintiffs' claims fail because Plaintiffs are barred from bringing lack
4 of substantiation claims.

5 This Motion is based upon this Notice of Motion and Motion, the
6 concurrently filed Memorandum of Points and Authorities, the Request for Judicial
7 Notice, the Declaration of Paul L. Gale and exhibits attached thereto, and all
8 pleadings and papers on file in this action and upon such other matters and
9 arguments as may be presented to the Court prior to and at the time of the hearing.

10 This Motion is made following the conference of counsel pursuant to Local
11 Rule 7-3, which took place on November 17, 2014.

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13 Dated: December 10, 2014

Respectfully submitted,
TROUTMAN SANDERS LLP

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16 By: /s/ Paul L. Gale
Paul L. Gale

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18 Attorneys for Defendants
NJOY, INC. and SOTERRA, INC.